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31192

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER	
PRIZANT, J	
ART UNIT	PAPER NUMBER
332	3

DATE MAILED: 07/28/89

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire ~~3~~ month(s), 30 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449
4. ☐ Notice of Informal Patent Application, Form PTO-152
5. ☐ Information on How to Effect Drawing Changes, PTO-1474
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-9 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☐ Claims _____ are rejected.

5. ☐ Claims _____ are objected to.

6. ☒ Claims 1-9 are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).

10. ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved. ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-6, and 51, drawn to a method of treating cardiovascular disease, classified in Class 623, subclass 3.

II. Claims 7-28, 39, 40, 42-50, 52-91, drawn to an artificial heart, classified in Class 623, subclass 3.

III. Claims 29, 30-32, 37-38, drawn to a blood connector system, classified in Class 623, subclass 1.

IV. Claims 33-36, drawn to a bearing system, classified in Class 389, subclass 133.

V. Claim 41, drawn to the method of making an artificial heart, classified in Class 623, subclass 3.

These methods are distinct, each from the other because each presents structure or method of utility apart from use with the other groups.

Because these inventions are distinct for the reasons given above and have, in some cases, acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention within the artificial heart group:

a) pusher plate heart drive;
b) axial flow type;
c) centrifugal type;
d) mixed flow type;

e) fluidic drive;
f) muscle powered drive.

Within these six groups the applicant has generally disclosed other species (such as figures 39a-f with respect to axial flow). Only one such species may be selected.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

JP
July 23, 1989

RICHARD J. APLEY
S. P. E.
ART UNIT 332